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February 28, 2001

REDACTED – FOR PUBLIC INSPECTION

Via hand delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: CC Docket No. 01-9

Dear Ms. Salas:

Enclosed for filing are the confidential portions of the Reply Comments of Covad Communications Company and a redacted version of the entire submission.

Any parties seeking access to the confidential documents should contact the undersigned at 202-220-0409.

Very truly yours,

Jason Oxman
Senior Counsel

Cc: Susan Pie (12 copies of confidential submission, 1 redacted copy)
ITS (1 redacted copy)

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REDACTED FILING ---- FOR INCLUSION IN THE PUBLIC DOCKET

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England Inc., Bell	)	CC Docket No. 01-9
Atlantic Communications, Inc. (d/b/a Verizon	)	
Long Distance), NYNEX Long Distance	)	
Company (d/b/a Verizon Enterprise Solutions),	)	
And Verizon Global Networks Inc., for	)	
Authorization to Provide In-Region, InterLATA	)	
Services in Massachusetts	)	

REPLY COMMENTS OF COVAD COMMUNICATIONS COMPANY

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In weighing Verizon's current performance in Massachusetts, the Commission should be aware that approval of a section 271 application freezes the BOC's current performance at what the Commission has *de jure* deemed an "acceptable" level. In other words, what Verizon is doing for CLECs at the time a section 271 application is approved becomes the performance ceiling. The Commission should be aware that Verizon continues to discriminate against CLECs in New York to the exact same extent as when its application was approved – in December 2000, for example, Verizon was to pay over $3.5 million to CLECs pursuant to the New York PAP. The January 2001 numbers, released February 26, 2001, show Verizon owing $3.8 million in New York. In fact, Verizon pretty much hit the cap for DSL in New York – January 2001 shows Verizon owing DSL providers $798,246, just under the $833,000 cap.[1] Is this a sign that the PAP is working? No. It's a sign that Verizon thinks it is worth the minor cost of only a few million dollars (representing literally just minutes of revenue for Verizon) to drive its competitors out of business.[2]

As the Department of Justice notes in its recently completed evaluation of the instant application, DSL issues are once again at the forefront of Verizon's discriminatory behavior. "These issues prevent the Department from concluding at this stage that Verizon has adequately demonstrated its ability to provide nondiscriminatory access to DSL loops."[3] What does that mean? To put it simply, Verizon has not satisfied

[1] A Verizon decision to pay, at maximum, a mere $833,000 a month to stifle DSL competition in New York cannot be a difficult one to make.
[2] Since the first Massachusetts application, the following DSL providers in Massachusetts are no more: NorthPoint, HarvardNet, Vitts, and Digital Broadband.
[3] DOJ Evaluation at 14-15. *See also* Official Statement of John M. Nannes, Acting Assistant Attorney General in charge of the Department's Antitrust Division, available at http://www.usdoj.gov/atr/public/press_releases/2001/7540.htm ("Ensuring that competitors have nondiscriminatory access to DSL lines is important to the development of competition in broadband

its burden of proof in this proceeding. The Commission has always held that a section 271 applicant like Verizon has the burden to prove that it has satisfied the competitive checklist in Massachusetts. DOJ has now concluded that Verizon has not met that burden. Were the Commission to afford that conclusion the "substantial weight" the statute requires, it would reach the exact same conclusion.[4] There is one possibility: that Verizon will adduce additional evidence suggesting that it has cleaned up its act in recent weeks. The complete-when-filed rule, set out by the Commission in the very first section 271 application it addressed, requires Bell Operating Companies (BOCs) to comply with the competitive checklist at the time the application is filed.[5] Operating on the assumption that Verizon will adduce new evidence in an effort to rebut the DOJ's conclusions, Covad once again updates the Commission on Verizon's failure to remedy its discriminatory behavior in Massachusetts.

Verizon recently reported to financial analysts the "good" news that it is losing fewer and fewer lines to competitors as each quarter progresses.[6] For example, Verizon reported that it lost 29% fewer lines to competitors in the second half of 2000 than it did in the first half. Thus, while Verizon lost 677,000 lines to competitors in the first quarter

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services, but the Department has been unable to find that Verizon has clearly demonstrated that it has provided such access to its competitors.")

[4] But again, the Commission has shown that "substantial weight" can be meaningless. In Verizon's New York application, the Commission made clear its view that, so long as the Commission simply states that it has "given substantial weight to the Department of Justice's views," the Commission is free to reject them. *Bell Atlantic New York 271 Order* at para. 328. Of course, the Commission also stated that it did "not expect the special circumstances that are present in this application to exist in future applications," so the Department of Justice's conclusion that Verizon has not met its burden of proof should merit the statutorily mandated weight this time around. *Id.* at para. 336.

[5] Michigan 271 Order ¶¶ 49-54 ("a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely on making its findings thereon."); FCC Texas Order ¶ 35 ("new evidence, however, must cover only the period placed in dispute by commenters and may, in no event, post-date the filing of the comments (i.e., day 20).").

[6] *See, e.g.*, "CLEC Competition Slowing," in Note on Verizon Communications, issued February 2001 by Credit Suisse First Boston, included as Attachment A to this filing.

of 2000, it lost only 460,000 lines in the third quarter of 2000. Thus is the legacy of the 1996 Act.

Remote Terminals

Verizon contends in this proceeding that it has taken all necessary steps to comply with its *UNE Remand* and *Bell Atlantic/GTE* merger condition obligations to make remote terminal capabilities available to requesting carriers. In fact, Verizon notes that it has gone so far as to set out for competitors what its remote terminal DSL offering will be – if and when Verizon decides to offer one. As set out in Attachment B, Verizon proposed to competitive LECs a schedule for its "PARTS" proposal. That schedule, as Verizon makes clear, is not an offering – it is merely a proposed timeline that Verizon will set in place if it decides to launch a retail DSL RT product. The timeline works as follows: after Verizon decides to deploy PARTS, it will run three months of technical trials, nine months of operational trials, and then the service will be available to CLECs in eleven months. In sum, if Verizon were to "decide" today to deploy parts, CLECs would be able to serve their customers through remote terminals in the Verizon region at the earliest in 2002.

This hypothetical plan contrasts sharply with what Verizon has announced to financial analysts. It should be of particular interest to the Commission what Verizon discloses to the investment community, as Verizon is not permitted to misrepresent with impunity its future plans. On February 7, 2001, one day *after* its CLEC PARTS presentation, Verizon made a presentation to the investment community regarding its year 2001 DSL plans. In that presentation, attached in pertinent part to this filing as Attachment C, Verizon states that it has DSL at the remote terminal in "early deployment." Incredibly, Verizon even makes specific retail revenue projections, beginning in early 2001, for its DSL-capable remotes. It is important to note that the person who made this February 7 presentation, including the statement that remote terminal DSL is in early deployment and the specific revenue projections, was none other than Paul Lacouture, Verizon's affiant in this proceeding. In sum, Verizon represents to the Commission that it hasn't yet decided whether to deploy a DSL-capable remote terminal product, and that in any event such capability will not be made available to CLECs until at least 2001. At the same time, Verizon tells investors that it not only has such a capability in early deployment, it has developed specific revenue projections for such a retail offering.

Linesplitting

A similar split between regulatory filings and reality exists in the area of linesplitting. On February 14, 2001, Verizon issued a "Statement of Policy" regarding linesplitting, provided as Attachment D to this filing. It is a single paragraph that purports to set out Verizon's compliance with the Commission's linesplitting rules. The Commission should know, however, that Verizon simply stating that something is available does not make it so.

And what's the reality? Verizon sent an email to CLECs on February 22, 2001, included as Attachment E to this filing, announcing that linesplitting "trials" would be available starting June 1, 2001, in four central offices in Manhattan. There is obviously a disconnect between the paragraph that Verizon sent out in order to cover itself for regulatory purposes, and what Verizon is actually telling the CLECs one week later about linesplitting availability – that it won't even be trialled until June. Again, here we have an issue that Covad and other CLECs have been asking Verizon to address for months, and Verizon is only now putting a pilot together. Will it work? We obviously won't know until Verizon actually starts the pilot in June. Is linesplitting available today? No. How do we know that? Because Verizon is going to start a trial of the capability in June for the first time.

Stand-alone loop performance

Covad has argued extensively in prior filings in this docket, including the initial round of comments on the instant refiling, that Verizon's excuses and unilateral exclusions are inappropriate, misleading, and inaccurate. But even if the Commission does not believe Covad's assertions, it should believe – and indeed is required to give substantial weight to – the Department of Justice, which reached the exact same conclusions.

> For certain important measures, Verizon's reported performance still falls below prescribed standards. In addition, some of Verizon's restatements of these measures do not provide a reliable alternative means of determining that Verizon is providing its competitors with adequate access to DSL loops, and significant questions remain as to other restatements.[7]

In the Department of Justice's view, Verizon is only able to even approach nondiscriminatory performance (although it still doesn't make it) by unilaterally excluding the vast majority of CLEC loop orders from the performance metrics. As to on-time loop performance, for example, Verizon has to resort to counting less than 17% of the actual loops that were due. And yet, as the Department of Justice concluded:

> Even with these exclusions, which collectively remove from the performance report more than 83 percent of CLEC orders, Verizon's performance, while better, still falls substantially short of completing 95 percent of CLEC orders within six days, the revised prescribed standard.[8]

[7] DOJ Evaluation at 8.
[8] DOJ Evaluation at 9.

So even when it counts only 17% of the loops that it should be reporting on, unilaterally excluding the vast majority of loops, Verizon can't even manage to show nondiscriminatory performance.[9] And this poor performance is reflected across Verizon's metrics: as the Department noted, "Verizon's average installation interval performance, a companion measure, is inconsistent, ranging from better than retail to 41.7 percent worse than retail."[10]

Verizon continues to refuse to disclose how many orders for CLEC loops it actually received in a given month, which would give a more accurate picture of how Verizon's discriminatory loop practices result in far more CLEC customers canceling their orders. As the Department of Justice concluded:

> In interpreting on-time metrics such as Verizon's, it is important to recognize that, because they are calculated based on completed orders rather than all submitted orders, they will overstate the quality of the BOC's performance if orders are canceled because the BOC takes too long to provision them (but not if cancellations are attributable to other factors). This is also true of a percent orders completed in "x" days measure, such as PR-3-10, which also is based on completed orders.[11]

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[9] *See also* Rhythms Comments at 21 ("[U]ntil Verizon provisions xDSL loops within the six-day provisioning interval, it has not met the standard and should not be granted 271 approval. Verizon was intimately involved with the development of that standard, and should not now be permitted to argue that "parity" with its retail offering is sufficient.").

[10] DOJ Evaluation at 10.

[11] DOJ Evaluation at 9 n. 29. DOJ mistakenly states that CLECs did not argue that this fact resulted in a misrepresentation of Verizon's actual performance. Not only did Covad make this argument to the Commission, but it also made the argument directly to Verizon. In its January 5, 2001 submission to Verizon listing substantive fixes from Verizon in Massachusetts in advance of Verizon's refiling, Covad specifically demanded that Verizon report, as to each loop performance metric, "(1) the number it started with before excluding anything, i.e. the total number of possible observations, (2) the specific categories of exclusions, and (3) the number excluded from the final observation total for each of those categories." Covad Jan. 5, 2001 Letter at 3. Covad stated in its letter that such reporting would ensure that "Verizon will have an easier task in explaining its performance, competitors will be able to easily compare those exclusion categories to their own internal records, and the FCC, DOJ and the DTE will more easily be able to evaluate competing claims. Verizon must fairly and completely report on the specific reasons for each exclusion and ensure that the total observations reported equals the total possible observations minus the exclusions listed." *Id.* at 4. Covad provided a copy of that letter to both the DTE and the Commission. In sum, Covad has already set out its argument that the performance metrics permit Verizon to exclude a broad category of orders that were never completed. Covad has also set forth this argument by highlighting

Perversely, Verizon actually benefits from failing altogether to complete a Covad loop order, or delaying provisioning long enough that the CLEC customer simply gives up and cancels the order for service. In such scenarios, as the Department of Justice concluded, the delayed performance would never count against Verizon, because it would never show up in the metrics.

Verizon does a better job of reporting its actual performance to Covad than it does to the Commission. Specifically, Covad gets a daily "FOC + 1" report from Verizon every day, showing Verizon's loop delivery performance on the prior day. A chart summarizing those reports is attached to these comments as Attachment F.[12] It is important to remember that this is Verizon's own data, reported directly to Covad. For October 2000, Verizon completed on the due date ****** Covad stand-alone loop orders that had a "FOC" date. In November 2000, Verizon completed on the due date ***** orders that had a FOC date. In December 2000, Verizon completed on time ***** that had a FOC date. These results demonstrate that Verizon does not deliver loops on the date it committed to deliver them. Again, this is Verizon's own data, provided to Covad via daily FOC + 1 reports.

Even if the Commission chooses not to believe Covad, it is required to give substantial weight to the Department of Justice, which reached the same conclusion as to

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the fact that the number of loops Verizon reports on for all CLECs is consistently lower than the number of loops that Covad alone orders in each month.

[12] It is important to remember that this is Verizon's own data, and thus Covad has not altered or validated it in any way. The classifications of reasons for misses are Verizon's own categories. It is also important to note that Verizon classifies certain misses as "facilities" issues – even though Verizon assigned a pair and gave Covad a FOC date for the order. These issues thus should not be excluded, because if there was a facilities problem Verizon should have discovered it before giving a FOC and making Covad's customer stay home a day for nothing. Also, as evidenced by Covad's study of acceptance testing I-codes, the frequency with which Verizon technicians are not at the NID for acceptance testing suggests that claims of "no access" may well be false – the technician was likely never at the actual customer's premises on the

Verizon's performance: "Although Verizon's performance for CLECs improved substantially in December 2000, narrowing the gap, Verizon has not established a consistent record of improved performance."[13] Yes, Verizon's performance as stated in its FOC + 1 report improved from 54% on-time in October to 60% on-time in December. Verizon still does much, much better for its own retail customers. And don't forget that upwards of four times as many Covad loops do not work when delivered than do Verizon retail loops. So Verizon's performance must be adjusted downward to reflect the high performance of nonworking loops that Verizon delivers to Covad.[14]

In the initial comment round, Covad documented a study of the acceptance testing issues that Verizon raised as an excuse for its discriminatory repair and maintenance performance. Examining 40% of the loops Verizon claimed that Covad had knowingly accepted even though they were "bad" loops, Covad demonstrated that those loops were in fact accepted as good when provisioned because they were good, so far as Covad could tell. They were good only because Verizon was either (a) not at the NID, (b) hadn't finished provisioning the loop all the way to the NID, or (c) something went wrong with the loop after Covad accepted it.

Covad has now completed an analysis of the I-codes for the entire month of November 2000, and the results are set out in the attached joint declaration of Michael

FOC date. Finally, each FOC date is not necessarily the first FOC date – it could be a subsequent FOC given after initial installation misses.

[13] DOJ Evaluation at 11 (MTTR).

[14] The Commission should be aware of the Department of Justice's conclusion that Verizon aggregated its data together to minimize the stark appearance of discriminatory conduct. For example, as to missed repair appointments, the Department of Justice concluded that "C2C data show that from September through November 2000, Verizon met 85 percent of DSL repair appointments for CLECs compared to approximately 86 percent for Verizon retail DSL customers. These aggregate data, however, blur the fact that Verizon's performance has been inconsistent. Verizon performed worse for CLECs than for itself in October and November 2000 and then better for CLECs than for itself in December 2000." DOJ Evaluation at 11.

Clancy and John Berard. In summary, the results show that of the 25 I-codes that Verizon provided to Covad and the Commission as examples of CLEC-caused I-codes – codes that Verizon believes should be excluded from its performance metrics – exactly *none* of those I-codes is Covad's fault. Indeed, they are all actual maintenance and repair issues with loops – loops that Verizon delivered in non-working order, or loops that Verizon initially delivered in working order but to the wrong address, the wrong NID or, in many cases, simply stole the pair for its own use. How does Covad know all this? Because it keeps the records of acceptance tests, and analyzed those records in order to determine, for example, if there was a difference in the loop between the time it was acceptance tested and the time it was fixed by Verizon following a trouble ticket. In many cases, the loop was much shorter when acceptance tested than when repaired by Verizon, demonstrating that Verizon didn't test the full loop length during acceptance testing. The attached declaration sets out the specific results and analysis.

As with the rest of Covad's assertions, the Commission can choose not to believe them, but it is statutorily bound to give substantial weight to the Department of Justice, which concluded the exact same thing: "A review of Verizon's methodology reveals that it generally infers improper acceptance from the nature of the trouble reported. Such an inference could reliably be made if the type of trouble reported: (1) could not occur post-acceptance, but rather must have existed at acceptance, and (2) would consistently be detected by the joint testing methods employed."[15] As Covad demonstrated, each of the acceptance tested loops in its study were either improperly acceptance tested, or could have been subject to post-acceptance outages. Verizon's metrics, demonstrating that

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[15] DOJ Evaluation at 11 n. 39.

Covad customers suffer upwards of four times as many outages as do Verizon's retail customers, tell the real story of discriminatory behavior in Massachusetts. In addition, the Department of Justice also noted that even with these unilateral exclusions, Verizon still does not offer parity performance to its competitors:

> These modifications result in still lower reported rates of installation troubles, although none of these four sets of data shows parity performance. In addition, CLECs question whether Verizon may appropriately exclude some of these trouble tickets, a factual dispute that remains unresolved.[16]

The Department of Justice also poked holes in another Verizon excuse – that CLECs skew the missed appointment metrics by rejecting weekend appointments. As to Covad, Verizon claims that Covad rejected ***** possible weekend appointments, or 52.67% of possible weekend appointments.[17] That almost sounds like Covad must be skewing Verizon's repair performance by half. Of course, that's not the case. Indeed, the ***** weekend appointment rejections for the period October through November 2000, if accepted as true, represent only about 10% of the repair and maintenance appointments scheduled for those three months. More importantly, Verizon makes no direct link between Covad rejecting a weekend appointment and Verizon adjusting its performance by subtracting 24 or 48 hours from mean time to repair. For example, Verizon subtracts 48 hours from any Covad order where the trouble ticket was received on Friday, Verizon committed to fix it on Saturday, Verizon actually accessed the trouble-ticketed premises on Monday, and Verizon cleared the trouble ticket on Monday.[18] What's missing here? It doesn't appear that Covad actually rejected the weekend appointment – indeed, since Verizon's commitment was Saturday, it appears

[16] DOJ Evaluation at 10-11.
[17] Lacouture/Ruesterholz Supp. Decl. at Attachment GG, p. 2 of 2.
[18] Lacouture/Ruesterholz Supp. Decl. at Attachment HH.

that Covad actually accepted the weekend appointment. But for some reason, Verizon failed to appear on Saturday, and didn't fix the trouble until Monday.[19] Regardless, Verizon decided to subtract 48 hours from its MTTR. Verizon does something similar as to Sunday appointments. Where Verizon notes that a trouble ticket was received on Saturday, and committed to and completed on Monday, Verizon still subtracts 24 hours from the MTTR. Why? Apparently Verizon simply assumes that a Sunday appointment was offered and rejected – yet Verizon's own data showed that it committed to repair the trouble on Monday, not Sunday.

Here's the question for Verizon: as to each of these Covad loops, did Verizon simply assume that Covad rejected a Sunday appointment when Covad filed a trouble ticket on Saturday? Moreover, did Verizon simply assume that, if the Verizon commitment date was Monday on a trouble ticket submitted by Covad on Saturday, it was because Covad rejected a Sunday appointment? Or does Verizon even know if Covad was offered, and rejected, a Sunday appointment? Verizon's unilateral modification to the performance metrics suggest that Verizon automatically assumed that Covad rejected a Sunday appointment for any trouble ticket Covad submitted on a Saturday. If this is the case, then Verizon is once again unilaterally modifying its poor performance in an inappropriate manner.

Next, there is the DOJ's assessment of Verizon's weekend excuse – in essence, that Verizon took advantage of the excuse for CLEC appointment misses, but didn't adjust its own performance as well.

> Some CLEC DSL customers, which often are business customers, may not readily accept weekend repair appointments. By contrast, Verizon's DSL customers,

[19] It is not clear if this is because Covad affirmatively rejected the Saturday application, or if it is because Verizon is claiming that it attempted the repair on Saturday but for some reason could not complete it.

> which primarily are residential customers, may prefer weekend repair appointments, which may limit Verizon's ability to schedule weekday appointments for its customers. Excluding observations involving CLEC refusals of weekend appointments makes Verizon's performance for CLECs look stronger, moving the apparent balance toward parity. Excluding observations involving refused weekday appointments -- an adjustment Verizon did not make -- could make Verizon's performance to its retail unit or separate affiliate look better, moving the apparent balance away from parity.[20]

Verizon's decision to adjust its poor performance for CLECs up, but not to adjust its excellent performance for itself down, has an obvious affect on its efforts to show parity where there is none. Again, the Commission doesn't have to take Covad's word for it. The Department of Justice concluded the same thing.

Finally, the Department of Justice noted yet another seeming misrepresentation in Verizon's reported repair and maintenance performance.

> The C2C reports show a substantial lack of parity. The reported rate of installation troubles is lower in the revised performance measure, under which Verizon excludes troubles reported by CLECs that do not do joint acceptance testing of the loop at the time of installation, but the revised data still show a greater rate of installation troubles for CLECs than for Verizon retail or VADI. Moreover, the revised measure appears to be flawed. While trouble reports from carriers that do not conduct acceptance tests are excluded from the numerator of this measure, orders from such carriers are not excluded from the denominator. The result is to inappropriately lower the trouble report rate. When these orders are excluded from the denominator, the reported trouble rate is higher for October and November 2000 under the revised measure than as reported under the original C2C measure.[21]

<u>Linesharing</u>

Verizon has absolutely nothing on the record in this proceeding proving that it satisfies its checklist obligation to offer nondiscriminatory access to the linesharing UNE. Verizon recognized in its initial filing that the Commission required "incumbents to

[20] DOJ Evaluation at 12 n. 44.
[21] DOJ Evaluation at 10-11.

implement linesharing by the required date of June 6th."[22] Verizon then represented to the Commission that it "offers line sharing in Massachusetts in accordance with the Commission's requirements in the *Line Sharing Order*.[23] But then, Verizon conceded that in joint inspections of Massachusetts central offices with Covad, "several minor collocation-related issues" were revealed.[24] Those "minor" issues, such as splitter cards "not fully pushed into the splitter shelf" or "completion of cross connections [] delayed in some instances," are hardly "minor" issues: they are the issues that have prevented, and continue to prevent, Covad from accessing linesharing capability in Massachusetts.[25] Verizon installed splitters late, it installed them incorrectly, and it hasn't yet fixed the problems. As of the date Verizon filed its application, Verizon itself conceded that those "minor issues" were not yet resolved; indeed, Verizon had only completed "inspections" – importantly, not the actual fixes, just inspections – of 86% of Massachusetts central offices.[26] And what about 20 days after the application? On February 15, 2001, Verizon sent an email to Covad updating on progress made on the central office problems. That email, already provided to the Commission in this docket, sets out that Verizon still wasn't finished fixing problems in Massachusetts.

The Commission doesn't have to take Covad's word for it. The Department of Justice concluded exactly the same thing.[27] The Department concluded that, although Verizon had adduced evidence of its linesharing compliance,

> these results would not necessarily reflect instances in which a line sharing order previously may have been identified in Verizon's system as "complete" but where

[22] Lacouture/Ruesterholz Supp. Decl. at para. 126.
[23] Lacouture/Ruesterholz Supp. Decl. at para. 124.
[24] Lacouture/Ruesterholz Supp. Decl. at para. 139.
[25] Lacouture/Ruesterholz Supp. Decl. at para. 139.
[26] Lacouture/Ruesterholz Supp. Decl. at para. 138.
[27] *See also* Rhythms Comments at 6 (Verizon has yet to complete the central office wiring work necessary to enable Rhythms to place commercial volumes of line sharing orders in Massachusetts and New York.).

> the splitter was not functioning on the line. This could have occurred between September and November if a central office technician performed the necessary cross connection on an order, conducted a mechanized loop test to verify that dial tone was entering and leaving the splitter, and then marked the order as "complete." Unbeknownst to the technician, however, it is possible that in some cases the splitter may not have been functioning on the line, for example, if the splitter cards had not been pushed all the way into the splitter shelf (i.e. the cards were not properly seated.[28]

In other words, if the splitter was not properly installed, or not installed at all, Verizon would count the order as "complete" anyway so long as its technician marked it "complete," even though the splitter didn't work. As a result, the UNE was not provisioned at all – but Verizon would still count it as provisioned. As Covad demonstrated in the initial round of comments, Verizon has not, and indeed cannot, prove that it provides nondiscriminatory access to linesharing UNEs. Because Verizon is just now completing the process of fixing splitter installation problems in Massachusetts, and because improperly installed splitters tainted all of Verizon's data, Verizon has nothing in the record to support its claims.

What about linesharing trouble reports? Because of the high volume of CLEC linesharing problems, Verizon notes that it addresses CLEC line sharing troubles "without the receipt of a trouble ticket" and concedes that the "small number of maintenance and repair requests reported is likely attributable to that interim process."[29] This problem is compounded by the fact that, in Massachusetts and New York, Covad owns the splitter – so even when Verizon finds problems with its splitter installation, as has occurred in literally hundreds of central offices, Verizon will often code those as "CPE" problems (because it's Covad's splitter, not Verizon's), ensuring that the problems will be blamed on Covad, instead of where the blame properly rests. In

[28] Lacouture/Ruesterholz Supp. Decl. at para. 156.

addition, Verizon has been requiring Covad to supplement linesharing orders for new due dates (a so-called "supp") that were initially submitted in nonworking offices. For example, where Verizon had database problems and recorded CFA information improperly for linesharing, Covad would have to "supp" the order with new CFA information. Unfortunately, this means that the due date change is counted by Verizon as a "CLEC-request," and not counted against Verizon. This could be true for the vast majority of Covad's linesharing orders – we simply do not know. Clearly, it is more important for Covad to turn up its customers than to ensure the integrity of Verizon's metrics, so Covad has been forced to "supp" orders in order to serve its customers.

Verizon's linesharing performance data for the entire period in question in this application is inaccurate in any instance where a splitter was not properly installed in a central office. Are there any instances in New York or Massachusetts where Covad has proved that Verizon did not install splitters correctly? As documented by Verizon itself, yes. Verizon also states, without equivocation, that it fixes these problems without trouble tickets, and thus does not report to the Commission the extent of central office wiring problems. It is inconceivable to Covad how Verizon can then claim that it offers nondiscriminatory access to the linesharing UNE in Massachusetts. If the Commission accepts this application's linesharing performance, Verizon will have learned a simple lesson: it need only delay compliance with the Commission's rules until *after* it files a section 271 application, because doing so effectively insulates it from any inquiry into its linesharing performance.

Again, the Commission need not take Covad's word for it. Here's the Department of Justice's determination on Verizon's linesharing performance:

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[29] Lacouture/Ruesterholz Supp. Decl. at para. 168.

> The value of these performance reports, however, is substantially undermined by Verizon's statement that certain reports "may overstate" its performance because Verizon technicians marked some orders complete, even though splitter installation problems prevented line sharing over those loops. Since Verizon's application does not quantify the extent of this problem, it is impossible to reach any conclusions about the quality of Verizon's performance with respect to line-sharing loops based on these data.[30]

And where are we today? First of all, it is inconceivable that the Commission could even consider taking Verizon's word that it is "done" with linesharing in Massachusetts. Given the Commission's recent lack of dedication to the "complete-when-filed rule," Verizon will likely file reply comments indicating that it has just now finished reauditing and fixing all the central offices in Massachusetts (a total of ***** for Covad). At the same time, Verizon will not disclose any of the following facts:

(1) it has recently shut down central offices for its own retail DSL product – Infospeed – because of unanticipated high demand (Verizon is provisioning over 3500 linesharing orders *a day* for its retail arm);

(2) Verizon has yet to provision *****. At the same time, in the fourth quarter of last year Verizon equipped over 500 new central offices for linesharing capability for its own retail arm, but hasn't yet finished correctly provisioning central offices that Covad requested for linesharing capability – last April.[31]

(3) Verizon has not accounted for splitter installation problems in its linesharing performance data reported to the Commission, so any orders held or cancelled as a result of splitter problems in Massachusetts are conveniently absent from Verizon's performance;

[30] DOJ Evaluation at 13.

[31] *See also* Rhythms Comments at 9 ("Verizon is incorrect when it states that it has completed all of the collocation work necessary for line sharing as requested by CLECs in Massachusetts. Three central offices

(4) in New York, which Verizon relies on heavily for purposes of this application because of low volumes in Massachusetts, Verizon agreed last week to a schedule of fixing central office installation problems that extends out until at least March 2001.[32] In other words, the central offices in New York that Covad requested for linesharing are not finished.

Covad has repeatedly provided the Commission documentary evidence – evidence provided to Covad by Verizon itself – that Verizon is *still* fixing splitter installation problems throughout its footprint. In other words, Verizon is *still* not providing linesharing UNEs to Covad. That argument has been made. If the Commission chooses not to believe Covad, it should at least believe the Department of Justice: "Verizon's reinspection process, begun in December 2000, appears to validate CLEC claims that Verizon was unable to process line-sharing orders in certain central offices during September, October and November 2000. Because Verizon's performance measuring system is not designed to measure problems that limit the ability of CLECs to submit orders, performance reports covering such time periods may not constitute reliable evidence of adequate performance."[33] The point is that even if Verizon finishes fixing central office problems in Massachusetts by the midpoint of this application, it still misrepresented its linesharing performance to this Commission, and the Commission still has *absolutely no valid data from Verizon* – by Verizon's own admission -- demonstrating nondiscriminatory provisioning of linesharing UNEs. What the Commission does have is evidence that Verizon is turning up linesharing capability for

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in Massachusetts are still not complete and one is pending database verification. In New York, eight are not complete and five are pending database verification.").

[32] *See* Attachment G.

[33] DOJ Evaluation at 13-14.

itself faster than it can handle, and that it is killing off DSL CLECs one by one in Massachusetts by failing to provide them with linesharing capability. It's as simple as that.

And where does Covad stand on linesharing in Massachusetts today? Covad initially requested, in advance of the Commission's June 6, 2000 linesharing implementation deadline, that Verizon provide linesharing capability in ***** central offices in Massachusetts. All of those applications were submitted to Verizon in April 2000 – over 10 months ago. As of February 21, 2001, Covad has successfully provisioned orders in ***** offices. In the remaining ***** offices, representing ***** of the offices requested by Covad, Covad has not been able to successfully turn up a single linesharing customer. Here are the offices, with CLLI code and number of orders currently processing but not closed[34] (as of February 21) --- orders that remain on hold until Verizon fixes central office problems:

WTTWMAWC No Closed Orders	WTTWMAWC 3
WSFRMADE No Closed Orders	WSFRMADE No Processing Orders
WLHMMAWE No Closed Orders	WLHMMAWE 1
SPFDMAWO No Closed Orders	SPFDMAWO No Processing Orders
RNDHMAMENo Closed Orders	RNDHMAME1
NTCKMAEC No Closed Orders	NTCKMAEC 4
NDHMMAPI No Closed Orders	NDHMMAPI 3
MRBLMAPL No Closed Orders	MRBLMAPL 1
CHFRMANO No Closed Orders	CHFRMANO 5

[34] The numbers are small because, for obvious reasons, Covad is not submitting new linesharing orders in Massachusetts central offices that do not work.

BSTNMAFR No Closed Orders	BSTNMAFR No Processing Orders
BRNTMAWA No Closed Orders	BRNTMAWA 1

Despite these offices with pending Covad orders not being provisioned, despite Covad opening trouble tickets and requesting joint meets in central offices, Covad still is unable to close orders successfully in ***** of Massachusetts central offices. If Verizon claims that these offices are done, and the Commission simply takes Verizon's word for it, there's nothing more Covad can say.[35]

Perhaps most disturbing, Verizon has represented to the Commission on numerous occasions that Verizon permits joint technician meets in central offices where Covad is unable to provision service. Verizon is not doing anything of the sort. Here's one example from one single order in one single central office that Covad has been fighting to turn up. The trouble ticket numbers are included to allow Verizon an opportunity to respond:

> TT # UN023128 - Original TT asking for Co-op testing. Frame refused to co-op test due to the Pin being defective on the HMDF.
> TT # UN023198 - We set up a joint meet for 2.15.01. Our tech went to the CO, he called the LS group in VA. We conference in the RCMC. The RCMC, Alex told us that the CO was too busy to do a joint meet this date. They needed to reschedule it for 2.20.01. Rescheduled for 2-20-01.
> TT # UN023971 - Reed, the Covad trans tech shows up @ 12:45 for the 1:00 meet. Verizon meets the Covad tech, Reed, and informs Reed that they could gain sync and that the TT has been closed (reference TT# 051ND033). Alex from the RCMC was called and requested that the CO tech return to Reed to cooperative

[35] Offices listed as having "no processing orders" could have that status for one of two reasons. First, Covad "shut down" the office for linesharing because no orders were being provisioned, and Covad's customers subsequently cancelled their service requests because of the long delay. Covad would obviously not submit customer orders to a non-working central office, so that office will not have any orders pending until *both* Verizon and Covad jointly test splitter installation to verify that the office is a working office. Second, it is possible that Covad has not yet installed DSLAM cards in a particular office to support linesharing capability, and will not do so until the office is verified as a working office, to avoid wasting scarce equipment resources on non-working offices. Regardless of whether Covad's equipment is installed or not, Verizon obviously still has the obligation to correctly provision linesharing capability in offices ordered by Covad. The ability to test the splitter installation – an activity conducted at the frame, not in Covad's collocation space – exists regardless of whether Covad's equipment is fully installed.

> test. The CO tech returned to Reed at the POTS bay and informed that sync was good at the cable pair and the trouble ticket was closed, so no cooperative test would be done. Reed called the LS group back and requested to have this cooperative meet escalated. Reed was at the CO for approximately 3 hours. Still no resolution.

Verizon has repeatedly asserted in this application that it permits joint Covad/Verizon technician meets in real time to recertify central offices. In this case, and in several others throughout the Verizon footprint, Verizon simply refuses to do so, wasting Covad's technician time and further delaying resolution of linesharing implementation problems.

It is important for the Commission to understand that, as evidenced over the last eight months, just because Verizon says a central office is ready to accept linesharing orders, it isn't necessarily the truth. Covad has lost countless thousands of customers because of Verizon's complete failure to correctly install splitters and because of Verizon's delay in making linesharing capability available. Surely the Commission can understand why Covad is unwilling to simply take Verizon's statement today that it is finished at face value – and why Covad insists that the Commission be equally skeptical of such claims.[36] Because Verizon has only just now begun to complete its central office work in Massachusetts, Verizon needs to refile this application in three months, when it has valid performance data to show how it providing linesharing UNEs to competitors. If the Commission accepts Verizon's performance data as it stands – tainted, misleading, and incomplete -- it will be sending a very clear message to the two remaining data

[36] The Commission should be equally skeptical of the representations Verizon makes regarding central office readiness in Massachusetts. For example, as set out in Attachment H, a Verizon employee appears to have doctored a spreadsheet sent to Covad, after Covad pointed out that the original document did not certify a central office as Verizon claimed it had. Rather than admit the error, it appears – judging by the document "properties" which show the document was modified – that Verizon simply changed the spreadsheet and resent it with the original email, claiming that the document as modified was actually the

CLECs in Massachusetts: despite a November 1999 FCC order requiring linesharing UNEs, only Verizon's own retail arm is entitled to linesharing capability in Massachusetts.

Finally, on February 23, 2001, Verizon submitted an *ex parte* in the docket purporting to address questions from the Commission as to what Verizon found in each central office it re-inspected, and when those reinspections were complete. As to the latter question, Verizon reported that it had completed all necessary repairs for New York and Massachusetts for all linesharing arrangements "that were in place as of December 1, 2000." Verizon concedes that it has not completed everything, noting that the list of completed offices, those "in place" as of December 1, "constitute a bulk of these arrangements," not all of them. Verizon does not say how many "a bulk" is, but it is clearly at least one, meaning at least one central office in Massachusetts in New York is *still* not linesharing ready. Of course, it is much more than one. The Commission should know that Covad submitted *every single one* of its linesharing collocation applications in Massachusetts in April 2000 – and Covad's ***** New York applications were all submitted in March and April 2000 as well. Needless to say, pursuant to Verizon's collocation interval all of these arrangements should have been complete long before December 1, 2000, meaning that Verizon should be telling the Commission that *all* of the Massachusetts and New York offices have been fixed. But that is not what Verizon is telling the Commission. Indeed, Verizon is once again dodging the question – refusing to disclose exactly how many offices are working and how many still need to be fixed. Fortunately, Covad's experience in Massachusetts and New York allows it to directly

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document as originally sent. The Commission can, obviously, examine the document and reach its own conclusion. Covad's view is that Verizon misrepresented the information it provided to Covad.

answer the question. As detailed above, it is ***** non-working offices in Massachusetts. As detailed in Attachment G, there are ***** non-working offices in New York, and joint meets are scheduled to run through early March, with no guarantee of completion by that time.

In its February 23, 2001 *ex parte*, Verizon also fails to disclose what the specific problems are that it has found in New York and Massachusetts. Rather, it states generalizations, claiming that it found "a small number of issues, which were easily corrected." How many? Small number of issues meaning the same few issues in every central office? If Verizon database errors were found, as Verizon admits, how often did this happen? Did it ever happen more than once in the same central office? If it is true, as Verizon claims, that "not all of these issues would prevent the provisioning of a line sharing order," Verizon should submit a list of all linesharing orders that it has provisioned after fixing central office problems and break them down by service-affecting and non-service-affecting issues. Verizon also hints that some problems may have been with "the DLEC's portion of the work," but provides no specifics. Only Verizon has the information to back up its claims.[37] The Commission should seek specific and concrete additional information from Verizon, and permit Covad an opportunity to respond. All that is clear from Verizon's February 23 *ex parte* is that Verizon is not yet finished with the process of repairing central office linesharing installation problems, and that there is no end in sight.

[37] *See, e.g.*, Attachment G-1, which is a spreadsheet sent to Covad by Verizon on February 1, 2001, detailing daily linesharing order completions. How could two central offices in Massachusetts, and three in New York, still have splitter problems if Verizon has completed all of the central office splitter work correctly? How could Verizon inform Covad that its orders are not provisioned because Verizon's records indicate that a "splitter doesn't exist" or "splitter not in database"?

Collocation Power

Soon after withdrawing its first Massachusetts application, Verizon responded to claims that its collocation pricing practices – triple charging competitive LECs for the amount of power ordered – by filing a revised tariff in Massachusetts on January 12, 2001. On February 1, 20001, Covad filed objections to the revised collocation tariff with the DTE.[38] The DTE approved Verizon's revised tariff (literally, a matter of days later) without addressing a single one of the substantive issues raised by any party, including Covad.[39] Thus, despite detailed challenges to the pricing methodology employed by Verizon, the DTE undertook no analysis whatsoever of whether Verizon comported with TELRIC or other FCC pricing rules, choosing to simply approve the tariff without comment or analysis.

And as with linesharing implementation, Covad is finding that what Verizon says it is doing and what it actually does are two very different things.[40] As detailed in the attached email from Mark Hall,[41] Verizon told Covad as recently as February 14, 2001, that it had not implemented any collocation pricing changes anywhere in its footprint.

Finally, Verizon continues to press its argument that, because Covad orders power that requires both an A and B feed, Verizon is entitled to charge Covad for the full power drain that could occur over both of those feeds. This is obviously not the case. Although Covad does order a separate A and B feed, that is because Verizon's collocation

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[38] Attached as Attachment I.
[39] *See* DTE approval, at Attachment J.
[40] *See* ALTS Comments at 6 ("[T]he amount of power listed in the tariffs does not comport with the amount of power CLECs order, use, and are ultimately billed for. In fact, Verizon has taken it upon itself to "revise" the tariff in the form of padded CLEC bills. ... In some instances the charges are triple what the CLEC is ordering and using. Thus Verizon is charging for power not used and charging for items not listed in the tariff. ... The result is excessive over-charging for collocation which in turn affects the bottom line of the CLECs' ability to offer service.").
[41] *See* Attachment K.

application *requires* Covad to order the two feeds. And although Covad does receive power from Verizon over both feeds, that is *because Verizon delivers the power over both feeds.* But Verizon delivers *half* of the power Covad orders over each feed, not *twice* the power Covad orders, which is what Verizon is still billing Covad. In a scenario where Covad orders 40 amps of power, Verizon will deliver 20 amps over each feed, for a total of 40 amps, not 80 amps. Any way you slice the power up, Covad still is entitled to be charged only for what it orders, not for twice what it orders.[42]

OSS

Verizon has an interim solution for its failure to comply with the *UNE Remand* requirement that it provide Covad electronic access to loop makeup information. That solution is facially compliant with the Commission's rules, but only facially. An examination of what Verizon offers its competitors – compared to the functionality it provides itself – reveals that Verizon's interim solution is no different than Verizon reading the information to Covad over the phone.

Verizon's so-called "loop qualification – extended" is essentially the first step in Verizon's engineering query. Covad sends a loop qualification request to Verizon, which takes the request and manually enters it into LFACS. This doesn't happen immediately – it takes at least 24 hours. So a day after Covad submits its inquiry, a Verizon employee takes the results of that request, cuts the entire LFACS readout, pastes it into the "remarks" field of the web GUI, and sends it back to Covad.

[42] In order to prevent draining excess power that would harm its equipment, Covad uses H-taps, which limit the flow of power to only what Covad ordered or less. Covad is aware of a problem that occurred in February in Arlington, Virginia, where it appears that Covad's H-tap broke, permitting excess power to flow into Covad's collocation equipment. Verizon informed Covad of the excess power flow, because of the potential harm to Covad's equipment, and Covad immediately corrected the problem.

This process is an exact mirror of the OSS of BellSouth and other carriers that the Commission has specifically rejected in prior section 271 applications. It is a manual system, prone to errors, that does not allow Covad to inform a customer "real time" whether service is available. It also does not permit Covad to parse the results of the LFACS data in order to populate and integrate Covad's own OSS pre-order and order systems – which Verizon itself could, and indeed does, do in order to tell its own retail customers in real-time if they can get Verizon DSL. In sum, Verizon has electronic access to the LMU it needs in real time (remember, just because Verizon doesn't use all the LMU it has electronically doesn't mean it has no obligation to provide it to Covad so Covad can do what Verizon can do in real time) but Covad has no such access, and must wait at least a day in order to tell customers if they can get service. Verizon can program its systems to automatically analyze available LMU, such as loop length, to determine whether service can be offered, whereas Covad has only the cut and pasted, unparsed and unparsable data, and cannot put the information to any use.[43]

Again, the obligation on Verizon is not simply to provide the LMU information, but to provide it in an electronic form that allows Covad to parse the data and integrate it into Covad's own OSS.[44] In addition, Verizon requires Covad to use two separate GUI

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[43] Attachment L sets forth "screen shots" of the LMU provided by the interim tool. Covad cannot submit an address into the tool, unlike Verizon's retail representatives, in order to secure loop makeup information. Indeed, Verizon returns the information in a format that has no identifying characteristics about the loop (address, telephone number, etc.) whatsoever – only the LMU itself on a stand-alone page. This system is clearly a manual workaround, and Covad needs access to the same capabilities Verizon's representatives have. The *UNE Remand Order* requires it.

[44] The Commission has repeatedly addressed and rejected exactly this type of OSS in prior section 271 applications. *See, e.g.* BellSouth South Carolina at para. 165 ("BellSouth suggests that competing carriers could 'cut and paste' the information from LENS into another interface. We conclude that this suggested method would also not provide competing carriers with equivalent access to OSS functions for pre-ordering."); BellSouth Louisiana I at para. 49 ("competing carriers must first retrieve information from the LENS pre-ordering interface and then manually re-key the information into their own operational support systems and the EDI ordering interface. By contrast, BellSouth's retail operations use an integrated pre-ordering/ordering system, which eliminates the need for re-keying of information.").

tools – loop qualification and loop qualification "extended" – meaning Covad has to conduct two separate transactions, each incapable of integrating with one another, to access LMU. In addition, the tool is tied to one Covad agent – meaning the results are returned by Verizon to a single person, not a system, making it impossible for the rest of Covad to work with that data request. Finally, the information comes back with only the "remarks" field filled – there is no indication as to which telephone number was queried, what the customer's address is, or any other identifying characteristics of the loop – leaving Covad to guess which customer that information applies to.

Of course, Verizon recognizes that this system does not comply with its UNE Remand obligations, which is why it makes clear that this is an "interim" solution. The real solution, which Covad has been asking for since 1999, will be available in a minimum of 8 months. During that entire time, Verizon retains the ability to provide its customers instant answers on whether they can get service, and Covad is stuck with a system that only allows it to tell its own customers whether they would qualify for Verizon's retail service. That is not what the Commission's rules require. The only remaining question is whether the Commission will substitute Verizon's promise to implement a UNE Remand compliant tool in eight months or so for actual compliance with the law. The obvious problem with that approach would be the statement that compliance with the Commission's rules is no longer a section 271 checklist requirement.

In addition, Verizon recently informed Covad that it would not have a "fix" available until at least June 2001 for a problem with Verizon's existing loop qualification tool that Covad has been complaining about for months. As detailed by Covad in its initial comments, approximately 4-7% of Covad loop qualification requests come back with erroneous results, or no results at all. The error results in no loop data being returned, or data indicating that the loop is not qualified when it actually is qualified. Verizon has admitted the problem, and instituted a manual work around – twice a week, Covad submits a spreadsheet to Verizon with the erroneous loop information, and Verizon looks up the information manually in its systems and sends Covad the accurate information a few days later.[45]

The fix that Verizon proposes, which will solve the problem, it says, of LFACS and LiveWire not synching properly, will be available in June 2001. Thus, as it stands today, Verizon is fully aware – and has been for months – of a problem that causes Covad to incorrectly inform 4 to 7% of its potential customers that Covad cannot provide service to them. Covad stands to continue to lose 4 to 7 % of its potential customers until at least June, when Verizon proposes to fix the problem. This is not to say that Verizon couldn't fix the problem sooner – it simply does not want to.

It is also very important for the Commission to recognize that Verizon has developed its own loop prequalification tool – LiveWire – by programming it to look up data in LFACS automatically. Verizon only uses some of the data in LFACS, because its retail DSL product is lineshared only, and thus Verizon doesn't need most of the LFACS information. But what is important for the Commission's inquiry here is that Verizon has created its own retail loop qualification tool by virtue of the electronic access it granted itself to LFACS. This is exactly the ability that Covad seeks – the ability to create, in its

[45] *See also CLX Comments* at 15 ("Much of the inaccuracy of the LiveWire database, however, is likely attributable to the fact that Verizon does not actually populate with specific loop data in many cases, but often utilizes an averaged loop length for loops emanating from a particular central office. Verizon also states that it does not include in LiveWire loops utilizing DLC facilities or loops with load coils, which it assumed would exceed 18,000 feet for inclusion in this database. These arbitrary exclusions discriminate against CLECs and ISPs seeking to utilize line sharing, as the Commission has specifically stated that line

own OSS, a tool that will automatically determine if a Verizon UNE loop can support the service that Covad seeks to offer a potential customer. Verizon has created that real-time tool for itself, using data in LFACS. Verizon has consistently denied Covad the ability to do the same thing. As the Commission concluded in the *First Advanced Services Report and Order*, "[a]n incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops, either on an individual basis or for an entire central office, while competing providers are relegated to a slower and more cumbersome process to obtain that information."[46] Verizon created a tool that allows its retail representatives to determine instantaneously if a potential customer can get Verizon retail DSL – a tool created using electronic access to LFACS. Covad must take information from a potential customer, promise to call them back in a day or so, send a workaround form to Verizon, wait 24 hours while a Verizon employee manually looks the information up in LFACS, and then receive the cut and pasted and unparsed information back from Verizon. It is clear that Verizon is not providing the nondiscriminatory access to OSS that the Commission's rules require.

sharing must be made available on DLC systems and that BOCs may not refuse to qualify a loop merely because it exceeds 18,000 feet.").

[46] *First Advanced Services Report and Order* at para. 56.

For the reasons stated herein, the Commission should deny Verizon's application pursuant to section 271 of the Act for authority to provide in-region interLATA services in Massachusetts.

Respectfully submitted,

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